

June 15, 2005

Heather C. McLaughlin
City Attorney
The City of Benicia
City Hall
250 East L Street
Benicia, CA 94510

**Re: Your Request for Advice
Our File No. A-05-041**

Dear Ms. McLaughlin:

This letter is in response to your request for advice on behalf of Benicia Mayor Steve Messina, Vice-Mayor Elizabeth Patterson, and Councilmember Tom Campbell regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹ This advice is based on the facts you have provided in your request. The Fair Political Practices Commission (“Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Section 83114.)

QUESTION

Do Mayor Messina, Vice-Mayor Patterson, and Councilmember Campbell have potential conflicts of interest that would prohibit them from participating in a governmental decision regarding the City’s consideration of the Downtown Mixed Use District?

CONCLUSION

Yes. Mayor Messina, Vice-Mayor Patterson, and Councilmember Campbell have potential conflicts of interest that would prohibit them from participating in a governmental decision regarding the City’s consideration of the Downtown Mixed Use District.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All statutory references are to the Government Code unless otherwise indicated. All regulatory references are to Title 2 of the Code of Regulation unless otherwise indicated.

FACTS & ANALYSIS

In the *McLaughlin* Advice Letter No. A-05-013(a) we provided you advice regarding whether there was a potential conflict of interest for Mayor Messina and Councilmember Campbell in participating in governmental decisions regarding the Downtown Streetscape Plan. The potential conflict was related to their real property interests within 500 feet of the boundaries of the project. The same real property interests are involved here with respect to their proximity to the Downtown Mixed Use District and the governmental decision involved therein. Additionally, Vice-Mayor Patterson also owns property within 500 feet of the boundaries of the district.

Your current request reviews the eight-step conflict of interest analysis, as set forth in our last letter, as applied to the potential conflicts of interest for three of the public officials involved in this decision. For the reasons stated in *McLaughlin, supra*, and as outlined in your request for advice herein, each of the officials has a potential conflict of interest based on the proximity of their property (within 500 feet) to the boundaries of the project being affected by the governmental decision. As you noted, in your incoming request, since Vice-Mayor Patterson's property "is almost beyond 500 feet," there may be factors that rebut the presumption that the effect on her property is material. Please keep in mind, however, that any effect, even one-penny, is presumed to be material. (Regulation 18705.2(a)(1).)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: William J. Lenkeit
Counsel, Legal Division

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